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University of Michigan Library
Submitted by Melissa Levine, Lead Copyright Officer

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National Telecommunications & Information Administration
United States Patent and Trademark Office
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*Response of the University of Michigan Library to the Request for Comments
on Department of Commerce Green Paper, Copyright Policy, Creativity, and
Innovation in the Digital Economy*

The University of Michigan Library is pleased to respond to the Department of Commerce's Request for Comments on the Green Paper on copyright policy, creativity, and innovation in the digital economy. *I wish to express my support for and endorsement of the submission made by the Library Copyright Alliance.*¹ Libraries have unique and critical concerns that are well articulated by the Library Copyright Alliance submission.

The University of Michigan Library's Copyright Office provides copyright information and encourages awareness of copyright matters across the University community.² I took this Request for Comment as an opportunity to discuss these topics informally with colleagues at the University of Michigan. I share some of these comments with you, as the resulting observations are valuable for your overall inquiry and demonstrate some very practical concerns and prospects.

General observations

The request for comments asks whether and how the government can facilitate the further development of a robust online licensing environment. In considering this question as a library, we would like to point out that licensing regimes do not allow for the flexibility of the equity-based fair use limitation on a copyright holders rights, a limitation that necessary to prevent the Copyright Act from trammeling the First

¹ Kindly note my earlier Response to Notice of Inquiry on Copyright Policy, Creativity,

² See <http://lib.umich.edu/copyright>

Amendment. Any online licensing environment must safeguard the rights and uses codified in §§107-122 of the Copyright Act.

It is interesting to note the general trend in the UK to look to American notions of fair use to insert greater flexibility and corresponding innovation into their commercial sector particularly in the areas of data, data analytics, and data mining concurrently with licensing models. Of interest is the notion expressed that some in the UK and the EU see fair use in the American model as a competitive advantage.³

Some other observations from library colleagues that should be considered concurrently with this question:

- Formalize notice and takedown provisions for libraries and similar qualified educational or cultural institutions.
- Bolster the rights and uses authorized specifically for libraries and similarly qualified educational or cultural institutions acting in good faith.
- Address statutory damages as described in the LCA brief.
- Provide a mechanism for resale and redistribution of digital objects, a right of first sale, to address the concerns raised in *Capitol Records, LLC. v. ReDigi, Inc.*
- Provide greater leeway in exercising §§107 and 108-type rights and uses, perhaps with greater flexibility, in light of longer copyright duration.
- Improve accessible data about rights. This information is held privately in many cases or in formats not conducive to low cost searching or scalability.
- Limit damages or provide protections for uses made after good faith searches of the US Copyright Office Registry or similar publicly available databases.

Legal Framework for Remixes

I am working with a team of graduates from the University of Michigan Law School on a pilot project to examine applied learning opportunities for students in the arts

³ See for example open letter from Universities UK, *European Commission's Stakeholder Dialogue 'Licences for Europe' and Text and Data Mining* available at <http://international.ac.uk/media/2243028/Briefing%20-%20Licenses%20for%20Europe%20and%20Text%20and%20Data%20MiningREVISED.pdf> (last accessed November 13, 2013) compared to James Hurley, *Creative Industry welcomes Hargreaves' fair use rejection*, *The Telegraph*, May 18, 2011. <http://www.telegraph.co.uk/finance/businessclub/8521996/Creative-industry-welcomes-Hargreaves-fair-use-rejection.html>

Different industries may need different solutions. For example see the commentary at *Licences for Europe – A Stakeholder Dialogue" Text and Data Mining for Scientific Research Purposes Working Group*, February 26, 2013, an open letter to European Commission from the European Bureau of Library Information and Documentation Associations (EBLIDA) at <http://www.eblida.org/news/licences-for-europe-a-stakeholder-dialogue-text-and-data-mining-for-scientific-research-purposes-working-group.html> (note the Annex document that provides detailed concerns regarding copyright and data).

and humanities in entrepreneurship as part of a Third Century Initiative grant from the University of Michigan.⁴ As students, both of these lawyers interned with the University of Michigan Library's Copyright Office. *I want to share their insights with you, as they are valuable as to the remix question and to the notion that remixes do not usurp the original.*

During their internships, Brandon Weiner, Executive Director of Creative Rights, and Cliff Helm saw the *applied* relationships between copyright in theory and copyright in practice and recognized the need to help arts and humanities students develop competence in the basic contractual and business principles needed to support their creative work and professional futures. Based in part on their internships, Mr. Weiner and Mr. Helm proposed this project.⁵ Our current pilot focuses on music. Mr. Weiner and Mr. Helm made the following observations regarding your question regarding on remix:⁶

- The state of law (specifically the uncertainties associated with assessing fair use combined with the DMCA takedown process) unacceptably impedes creativity because it stalls or halts the sharing of creative works. Without a broad view of fair use as it applies to remixes, every work would require a license, and can be immediately taken down from a website by the copyright holder. This extends even to works that are arguably fair uses (simply because of the way the DMCA works).
- Additionally, the DMCA does not provide the flexibility required by remix culture. As a result, the proper focus for much of this conversation should be on the commercial/non-commercial use the remix has - as well on the impact the work can have on the commercial viability of the original work.

Respectfully submitted,



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Thank you Richard Adler, Kristina Eden, and Justin Bonfiglio of the University of Michigan Library for their contributions to this document.

⁴ Third Century Initiative, University of Michigan, Intensifying Student Learning, Entrepreneurial Skills: Bringing Entrepreneurial Skills to Students in the Arts at the University of Michigan. <http://thirdcentury.umich.edu/entrepreneurial-skills>

⁵ Creative Rights at <http://creative-rights.org/>

⁶ Personal correspondence with Brandon Weiner and Cliff Helm, October 7, 2013.

